

## EXHIBIT 5

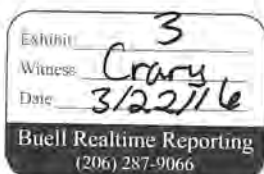
## POND5 CONTENT LICENSE AGREEMENT

This License Agreement governs the terms by which content users may download and use media works available for licensing via our online marketplace located at the Website (as defined below). Please read this Agreement carefully. By clicking "I agree" or otherwise signifying your acceptance of this Agreement or by downloading, copying or using any Content from the Website (as such terms are defined in Section 1 below), you are agreeing to be legally bound by this Agreement, which may be updated from time to time as described in Section 16 and which incorporates by this reference the Website Terms (as defined below).

If you are accepting this Agreement or downloading, copying or using any Content from the Website on behalf of your employer or another Person (as defined below), you represent and warrant that you have full legal authority to bind such other Person to this Agreement. If you do not have such authority or you do not agree with these terms, do not accept the Agreement and do not download or copy anything offered for download from the Website or otherwise use anything downloaded or copied.

### 1. Parties and Definitions.

- (a) If Licensee is located in the United States, then the party with which you are contracting is, and as used herein the terms "Pond5", "we", "us" and "our" refer to Pond5, Inc., a Delaware corporation. If Licensee is located outside the United States, then the party with which you are contracting is, and as used herein the terms "Pond5", "we", "us" mean, Pond5 GmbH, a Switzerland-based subsidiary of Pond5, Inc., and "our" means the possessive of whichever of the foregoing is applicable.
- (b) Our download process allows the Individual user of the Website who is downloading Content to designate the "licensee" of such Content (such designated licensee, the "Licensee"), and such Licensee may be different from that Individual. Notwithstanding the foregoing or anything else in this agreement, without limiting any of the representations and warranties in this Agreement, (i) a user may not download Content unless he or she has authority to and does in fact bind the designated Licensee to this Agreement, (ii) by using anything copied or downloaded from the Website, Licensee is agreeing to be legally bound by this Agreement, and (iii) Licensee will have or benefit from any of the rights and licenses set forth in this Agreement if and only if Licensee does not contest that it is bound by and fully complies with the terms herein.
- (c) If the Individual who is accepting this Agreement is doing so on behalf of his/her employer or another Person that is identified as the Licensee, then, subject to clause (a) above, (i) the term "you" as used in this Agreement means, jointly and severally, that Licensee, and with respect to Sections 1, 4, 6, 9, 10, 12 and 15 through 19 below, also such Individual, (ii) "your" means the possessive of you, and (iii) references to third parties exclude you.
- (d) As used in this Agreement:
  - i) "Audio Content" means Content that is a music or other audio file without video or one or more pictures or other visual works.
  - ii) "Content" means, individually and collectively, the works referred to in Section 2 that are downloaded or otherwise provided or licensed by us to you, whether in the form downloaded or incorporated into a Work For Distribution.
  - iii) "Content Information" means the tags, designations, annotations, information and documentation that are available on the Website or otherwise provided by us to you relating to Content.
  - iv) "Contributor(s)" means the artist(s) and other part(ies) who directly or indirectly provide Content to us.
  - v) "Copyright Act" means the United States Copyright Act, as amended.
  - vi) "Derivative work" (whether or not capitalized) has the meaning of said phrase under the Copyright Act.
  - vii) "Member" means the Pond5 user, member account holder or registrant.
  - viii) "Person" means an Individual or legal entity, including a company or a governmental agency or instrumentality.
  - ix) "Pond5 Parties" means Pond5, our Subsidiaries, our Resellers and our and their respective Representatives, shareholders and partners.



PON 000126



"Representatives") and (ii) who has been authorized by you to access and/or use Unincorporated Content in the creation, reproduction or distribution of Works for Distribution by or for you.

- (f) The License is conditioned upon (i) your and your Representatives' compliance with the terms of the License and this Agreement, (ii) your and your Representatives' use of the Content only as permitted in this Agreement, (iii) your fulfillment of your responsibilities hereunder, and (iv) our receipt of full payment of the amount(s) required herein or by the Website in respect to the applicable Content.

#### 4. Restrictions on Use.

- (a) The License is subject to all restrictions, conditions, requirements and responsibilities indicated in the Website or any other written notice from us prior to or at the time Content is delivered to or downloaded by you, all of which are incorporated by this reference into this Agreement.
- (b) You may not use, modify, resell, sublicense, assign, transfer, otherwise make available or permit access by any third Person to any Content, except as expressly authorized in this Agreement.
- (c) Except as expressly permitted by Section 3(e), you may not:
- i) distribute any Unincorporated Content as a standalone file or in any library or reusable template intended to allow on-demand use, reproduction or customization of such Content by third parties in electronic, printed, or other products;
  - ii) distribute Content in a manner that facilitates third parties' ability to (A) extract without extraordinary effort the Content for use separate and apart from the Work for Distribution or (B) create derivative works incorporating Content, except as part of the marketing, editing or distribution of the Work for Distribution; or
  - iii) include or post any Unincorporated Content or a representation of the same on a publicly displayed or distributed website or software or Internet application which facilitates its use as a template that could be customized by or at the request of a third party.
- (d) You may not: (i) sell or license Unincorporated Content to others for consumption, reproduction or re-sale or (ii) superficially modify any Unincorporated Content and sell or license it to others for consumption, reproduction or re-sale. For example, you may not (A) resell Unincorporated Content that is a video as a screensaver or desktop background, (B) sell or license an image extracted from Content to be printed on tee-shirts or other physical products for resale, or (C) print Unincorporated Content or an image extracted from Content on tee-shirts or other physical products for sale.
- (e) For photograph and illustration Content, you may not permit:
- (i) more than 250,000 physical analog (non-digital) reproductions of the Content (whether as Unincorporated Content or as part of a Work for Distribution), except as part of a Work for Distribution that is (A) advertising or promotional material that is not for sale, or (B) packaging or informational or promotional collateral that accompany media containing music or video (e.g., a CD or DVD) where the Work for Distribution containing the Content is not sold separately from the music or video; or
  - (ii) printed book or magazine covers with a distribution of more than 1000 copies to be made.
- (f) To the extent that source code is contained within the Content, you may not reverse engineer, decompile, or disassemble any part of such source code.
- (g) You may not remove any artist, Contributor or Pond5 copyright notice or attribution from any place where it is embedded in the Content or avoid, bypass, remove or impair any technological measure that limits access to the Content, but you may remove, modify or distort any third party copyrighted work, trademark, face or voice contained in the Content other than Audio Content without an appropriate release so that it is not ascertainable or recognizable.
- (h) Except for Content that is specified in the Website as being suitable for use in a logo, you may not incorporate any Content into a logo, trademark or service mark without explicit written permission from either us or the applicable Contributor.
- (i) You may not use any Content in a manner that, or in a Work for Distribution that, violates or we reasonably inform you violates, any law of Switzerland, the State of New York, the United States or any other applicable jurisdiction.



- (j) You may not use any Content in a manner that or in a Work For Distribution that under applicable law is or we reasonably determine is (i) pornographic, obscene, infringing, or defamatory, or (ii) reasonably likely to bring any person or property associated with the Content into disrepute (including any use in advertising or promoting illegal behavior, hostility or discrimination based on race, religion, ethnic background, sex, age, disability or sexual preference or any other subject matter that would be reasonably likely to be offensive or unflattering to any such person or property).
- (k) Notwithstanding the foregoing, some Licensed Content may be available for certain of the restricted uses, provided a supplemental or extended license is entered into for such uses (for the avoidance of doubt, such uses are not included in this License Agreement).

## **5. Content Containing Likenesses of Persons, Other Copyrighted Works, Trademarks or Other Third Party IP.**

- (a) You may not use any Content featuring a person in a manner that would lead a reasonable person to believe that the person personally uses or endorses a product or service, or if the depiction of the person would be unflattering or unduly controversial to a reasonable person, without accompanying each such use with a disclaimer indicating that the person is a model and their likeness is being used for illustrative purposes only.
- (b) You acknowledge and agree that (i) many jurisdictions provide legal protection against a person's name, image, voice, likeness, trademarks or property being used for commercial purposes without their consent, and (ii) for Content that contains or depicts any recognizable name, voice, person, trademark, trade dress, logo, copyrighted audio, design, art, architecture or other works (collectively "Third Party IP"), the License does not include the Third Party IP. However, in some cases, releases and clearances for Third Party IP have been obtained, and in such cases, to the extent contemplated by such releases and clearances, licensees and their agents are entitled to the benefit of the same. We endeavor to post information provided to us by the Contributors regarding whether such releases and clearances have been obtained in the Content Information. On your request and purchase of a License for Content that includes Third Party IP or our determination that you have a bona-fide interest in making such purchasing, we will use reasonable efforts to obtain from the Contributor and make available to you releases and clearances for any Third Party IP therein that are or have been provided to us for such Content; provided, however, we reserve the right to charge an additional fee for such assistance. We endeavor to identify on the Website the Content that contains Third Party IP but is not accompanied by the necessary associated model or property releases ("Editorial Content") as "editorial content". However, notwithstanding the foregoing, paragraph (c) or anything else in this Agreement, we assume no responsibility whatsoever, and you are solely responsible, for (A) reviewing and if necessary confirming the Content and the releases provided by the Contributors and other Content Information, (B) determining whether or not any Content is or is not Editorial Content, (C) determining whether any additional clearance or release is required in connection with any proposed use of the Content and (D) obtaining any additional releases and/or clearances that are legally required with regard to any Third Party IP.
- (c) Editorial Content may nevertheless be used in ways that would qualify as fair use under the U.S. Copyright Act and other applicable legislation, such as documentaries, news, parodies, educational content; provided, that we offer no assurance whatsoever that your use will qualify for fair use or that use that may qualify as fair use will protect you from legal claims of the owner of the Third Party IP and you assume the sole risk of such use.
- (d) Notwithstanding the generality of the preceding paragraphs and in addition thereto, for Content that is film, video footage or any other audiovisual work, any music, dialogue or other ambient audio contained therein is incidental only; accordingly, (i) we assume no responsibility whatsoever for obtaining, (ii) you are solely responsible for obtaining, and (iii) you will obtain any additional clearances relating to any of the same that may be required. In addition, we make no representations or warranties whatsoever regarding whether or not any additional fees or payments may be due to any union, guild, association or other organization for use of any of the same.

## **6. Your Responsibilities.**

- (a) You must fully comply with the terms of this Agreement and fully fulfill everything stated in this Agreement as your responsibility.
- (b) You must ensure full compliance with this Agreement by your Representatives.
- (c) If any Unincorporated Content is provided to the Licensee or any other Person, it must be accompanied by the Content Information and a copy of this Agreement.



- (d) You must make reasonable best efforts to safeguard against unauthorized third-Person access to UnIncorporated Content.

## 7. Additional Provisions Regarding Audio Content.

- (a) You may alter, edit or modify such Audio Content as otherwise permitted in this Agreement, subject to the restrictions in paragraph (g) below.
- (b) You may not monetize or collect revenue from YouTube (or other networks that allow for the so-called "claiming" or "monetization of content") for Audio Content by itself (i.e., Audio Content other than as and when used hereunder in Work For Distribution). If a unique license number is provided to you at the time of your purchase of the License, you will, in the event of any conflict on YouTube (or any such other network), via the tools supplied by YouTube (or the other applicable network), provide such license number to the applicable Contributor on request.
- (c) For purposes of this Agreement, if for Audio Content, the PRO box adjacent to the Audio Content on the Website page is checked or the Audio Content is otherwise designated as PRO Audio Content, then it is considered to be "PRO Audio Content" and if not, it is considered to be "Non-PRO Audio Content".
- (d) For Non-PRO Audio Content, the Contributor has represented and warranted that:
- i) the license to us includes rights to the composition of the Audio Content, if there is one; and
  - ii) except as provided in the next sentence, the licenses that we are authorized by the Contributor to grant includes the nonexclusive right to publicly perform, transmit to the public and distribute the Content, as contained in a Works for Distribution and when used as permitted under the other provisions of this Agreement.

However, notwithstanding the foregoing or anything else in this Agreement, if in connection with activities authorized hereunder, the law(s) of any jurisdiction (perhaps, for example, France and Spain), requires that, in order to avoid violation or the infringement of Contributor or third party rights notwithstanding the Contributor's agreement with us, rights be obtained from (and/or royalties be paid to) one or more PROs you must obtain such rights and pay such royalties at your sole expense in the jurisdiction.

- (e) For PRO Audio Content, nothing herein shall be deemed a waiver of any PRO royalties. You shall submit, and will instruct any third Person acquiring rights to the Works for Distribution, to submit cue sheets to the relevant PRO and to Pond5, and you will timely pay any PRO royalties or ensure such royalties are timely paid.
- (f) You may not do any of the following regarding any Audio Content:
- i) use it in whole or part to manufacture, distribute or sell records, CDs, jukeboxes, mp3s or any other predominantly audio product embodying it, in whole or in part, that is not synchronized or combined with other audio or musical content to create a derivative work as permitted in this Agreement (for example, you cannot use it to create a CD or other music compilation to give away or sell);
  - ii) place it on or in any product or platform that makes it available in a manner such that a person can without extraordinary effort extract or access or reproduce it as an electronic file;
  - iii) use or display it in whole or part in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement;
  - iv) resell it in whole or part as backgrounds, "hold" music or ringtones; or
  - v) use it in a design template application intended for resale, whether on-line or not, including a website template or electronic greeting card template.
- (g) Unless the Audio Content is designated on the Website as Being "Available For Musical Works", you may not do any of the following with it:

- i) incorporate it in whole or part in any product or platform that results in its re-distribution or re-sale (such as music download sites, stock music CDs, electronic greeting card web sites, web templates and the like);
- ii) edit, modify, or alter it (A) beyond basic editing (e.g., setting fade-in/fade-out points, determining start and end points, or using only a portion of it), (B) in a way that alters its fundamental character, harmonic structure, lyrics and/or melody, or (C) to the prejudice of the un-waivable moral rights of the artist(s);
- iii) use it in whole or part without synchronization or other combination with other original work(s) of authorship so that the combination constitutes a derivative work;
- iv) use it, in whole or in part, as an element of a new musical work (e.g., by combining the music Audio Content with other work so that a copyright can be claimed in the resulting song); or
- v) modify it, in whole or in part, so that a copyright can be claimed in the resulting song) other than as part of a Work For Distribution that consists of an audio visual work, computer or mobile device application or an Internet page.

## 8. Representations, Warranties and Disclaimers.

- (a) We warrant that (i) each Contributor of any Content has represented and warranted that the Contributor either owns the copyright in the Content or has the rights under the copyright to grant us a sublicense to grant the License granted to you herein (the "Contributor Warranty"), and (ii) to our knowledge and belief based solely on information provided by the Contributor, any talent or property release indicated in the Content Information for that Content as having been obtained has in fact been obtained.
- (b) Limited Warranty: We warrant that there are no material defects in the Content which would prevent it from being downloaded from the Website and used as permitted herein. If there are material defects in the Content, your exclusive remedy will be as follows: (i) upon request to us within 30 days of the download of such Content, you will be permitted to download the Content again to obtain a replacement copy of the Content; or (ii) if we determine, in our sole discretion, that defects would continue to prevent it from being downloaded from the Website or used as permitted herein successfully, we will refund the fee actually paid by you for such Content.
- (c) OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 9(a) or (b), THE WEBSITE, OUR SERVICES, THE CONTENT AND THE CONTENT INFORMATION ARE PROVIDED "AS IS" WITHOUT ANY REPRESENTATION, WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE AND OUR SUBSIDIARIES AND OUR AND THEIR RESELLERS DISCLAIM ANY REPRESENTATION OR WARRANTY THAT THE CONTENT OR THE CONTENT INFORMATION WILL MEET YOUR REQUIREMENTS OR THAT ITS USE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT PERFORMING RIGHTS OR OTHER SIMILAR FEES WILL NOT BE PAYABLE BY YOU. THE ENTIRE RISK AS TO THE QUALITY, PERFORMANCE AND USE OF THE WEBSITE, THE CONTENT AND THE CONTENT INFORMATION OR ANY SERVICES PROVIDED BY US IS WITH YOU. SHOULD THE CONTENT PROVE DEFECTIVE OR PAYMENT OF PERFORMING RIGHTS OR OTHER SIMILAR FEES BE REQUIRED, YOU (AND NOT US) ASSUME THE ENTIRE RISK AND COST OF ALL NECESSARY CORRECTIONS OR PAYMENTS. Certain jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. You have specific rights under this warranty, but you may have others, which vary from jurisdiction to jurisdiction.
- (d) While we have made reasonable efforts to correctly categorize, keyword, caption and title the Content, we do not warrant the accuracy of such information. Additionally, we do not warrant the accuracy of any metadata that may be provided with the Content or any Content Information.
- (e) You represent and warrant that you have full right and authority to enter into and perform under this agreement.
- (f) You represent that, if you are an individual, you are of sufficient legal age to create binding legal obligations set out in this Agreement.
- (g) You represent that all information provided to us by you or under your Pond5 membership, registration or user ID is accurate and true, including all information relating to the Member and the Licensee and credit



card or other payment information, and you agree to update such information as is necessary for such information to continue to be accurate and complete.

- (h) If you are the Individual who is downloading the Content, you represent that you are the Member under whose user ID you are accessing the Website and downloading or otherwise copying Content from the Website or us.
- (i) You represent that you are (i) the Licensee, or (ii) a duly authorized Representative of the Member or Licensee, as the case may be.
- (j) If the Individual who is entering into this Agreement is doing so on behalf of his/her employer or another Person, such Individual represents and warrants that (i) he/she has the full right and authority to execute, deliver and perform this Agreement on behalf such employer or other Person, and (ii) this Agreement is a binding Agreement of such employer or other Person, enforceable against such employer or other another Person in accordance with its terms. In the event that such Individual does not have such right, power and authority, such Individual agrees that in addition to all rights and remedies available against such employer or other Person or his/her or his/her/its Representatives relating to violation or infringement of Intellectual rights, he/she will be personally liable to us for any breaches of the terms of this Agreement or violation and infringement of Intellectual rights in the Content by such Individual, such employer or other Person and his/her or its Representatives.
- (k) If after downloading any Content, you receive any notice or otherwise learn in any way that any of the representations made by you in this Agreement were not accurate, complete and not misleading in all material respects or no longer are accurate, complete and not misleading in all material respects or of any claim by a third Person to the effect of the foregoing, you will promptly provide us with written notice all relevant facts regarding the same and if appropriate, cease use of the Content.

## **9. Contributor Warranty and Indemnity; Limitations of Liability.**

- (a) In our standard form of Contributor Agreement, the Contributors are required to (i) provide the Contributor Warranty for the benefit of us and any licensees of the Contributor's Content (e.g., you), and (ii) to agree to indemnify both us and such licensee (e.g., you) from and against an copyright infringement claim or action which is based on a claim that would be a breach of such representation and warranty, so long as the claim does not relate to a responsibility assumed by the licensee (e.g., you) in this Agreement (the "Contributor Indemnity"). Please note that Content provided by aggregated Content suppliers may be provided to us under an agreement that varies from our standard form of Contributor Agreement, in which case the provisions of this paragraph may not apply.
- (b) Except for claims which may be made against the Contributor under the Contributor Warranty or as provided under the Contributor Indemnity, the POND5 PARTIES AND THE CONTRIBUTORS SHALL NOT BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY PUNITIVE, SPECIAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOST PROFITS OR, IN THE CASE OF US OR THE OTHER POND5 PARTIES, ANY OTHER DAMAGES, COSTS OR LOSSES, INCLUDING THE COST OF COVER, ARISING UNDER THIS AGREEMENT OR OUT OF OR RELATED TO THE LICENSE, YOUR OR ANY OF YOUR REPRESENTATIVES' USE OR EXPLOITATION OF CONTENT, THE WEBSITE OR THE CONTENT INFORMATION, ANY SERVICES PROVIDED BY US OR THE RESULTS FROM THE USE THEREOF OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, COSTS OR LOSSES, WHETHER THE ACTION IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW FOR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.
- (c) NOTWITHSTANDING ANYTHING ELSE IN THIS OR ANY OTHER AGREEMENT, NONE OF THE POND5 PARTIES OR THE CONTRIBUTORS SHALL BE LIABLE FOR ANY DAMAGES, COSTS OR LOSSES ARISING AS A RESULT OF MODIFICATIONS MADE TO THE CONTENT BY YOU, ANY OF YOUR REPRESENTATIVES OR ANY THIRD PARTY OR THE CONTEXT IN WHICH THE CONTENT IS USED BY YOU.
- (d) NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, THE TOTAL MAXIMUM AGGREGATE LIABILITY OF THE POND5 PARTIES UNDER THIS AGREEMENT AND ANY OTHER AGREEMENT UNDER WHICH YOU HAVE LICENSED THE CONTENT OR OTHERWISE (REGARDLESS OF THE FILE SIZE OR OF THE NUMBER OF TIMES THAT YOU LICENSE THE SAME CONTENT FROM US), OR RELATED TO THE LICENSE OR THE USE OR EXPLOITATION OF ANY OR ALL OF THE CONTENT IN ANY MANNER WHATSOEVER OR ANY SERVICES



PROVIDED BY US, SHALL BE LIMITED TO AN AGGREGATE OF ONE THOUSAND U.S. DOLLARS (\$1,000), EVEN IF WE OR ANOTHER POND5 PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (e) No action, regardless of form, arising out of the License, any supplemental license or under this Agreement may be brought by you more than one year after the cause of the action has accrued, which in the case of an indemnity obligation is deemed to be the date the applicable claim is made or litigation is commenced.
- (f) We will not be held responsible for any delay or failure to comply with our obligations under this Agreement if the delay or failure arises from any cause which is beyond our reasonable control.
- (g) YOU ACKNOWLEDGE AND AGREE THAT (I) THE FEES FOR THE USE OF THE CONTENT REFLECT AND ARE SET IN RELIANCE UPON THE ALLOCATION OF RISK AND THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT, AND (II) THE LIMITATIONS OF LIABILITY HEREIN ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN YOU AND US.

#### **10. Indemnification.**

Except for claims which may be made against the Contributor under the Contributor Warranty or as provided under the Contributor Indemnity, you assume full responsibility for the use of the Content or any services provided by us. You agree to defend, indemnify and hold the Pond5 Parties and the Contributors harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees and costs) arising out of or relating to any claim, action or proceeding by a third Person relating to or arising directly or indirectly out of (i) your or any of your Representative's or distributees' use of any Content or any services provided by us, (ii) any claim of a failure to obtain from third parties all permissions necessary to use any Third Party IP, (iii) any claim of a failure to fulfill any responsibility or obligation assumed by you under this Agreement, (v) any modification of any Content or use of any Content with any work created or provided by you, any of your Representatives or a third Person, or (v) for any other breach by you or any of your Representatives of this Agreement.

#### **11. Term and Termination.**

- (a) The License will terminate automatically without notice from us if you fail to cure a breach or other failure to comply with any provision of this Agreement within 14 days of written notice of the same. Upon termination, you must yourself and must cause your Representatives to immediately: (i) stop using the Content; (ii) destroy or, upon our request, return the Content to us; (iii) delete or remove the Content from your premises, computer systems and storage (electronic or physical); and (iv) where applicable, ensure your Representatives and licensees do the same, provided that the provisions of this paragraph shall not apply to Works For Distribution created under this Agreement prior to termination or any variation thereof, provided that the licensee fees due hereunder were paid for the Content.
- (b) You may terminate this Agreement by giving written notice to us and destroying the Content and any derivative works, along with any copies or archives of it or accompanying materials (if applicable), and ceasing to use the Content for any purpose.
- (c) The terms and provisions of Sections 1, 4 and 6 through 18 shall survive termination or expiration of this Agreement.

#### **12. Payment.**

- (a) All sales of Licenses are final, and we are under no obligation to refund any fees paid by you for Content under any circumstances, except upon a material breach of the Contributor Warranty or one of our representations and warranties. However, in the event that we, in our sole discretion, determine to provide you with a refund, the license granted in this Agreement for the Content will be rescinded as if never granted. Any refund will be made by such means as we determine is appropriate.
- (b) Prices, offers and Content are subject to availability and may change.
- (c) You are responsible for promptly paying any and all applicable sales taxes, use taxes, value added taxes, property tax, customs, duties and any related interest or penalties imposed by any jurisdiction as a result of the License, any supplemental license or any use of the Content.
- (d) To the extent that you determine that you are required under law (e.g., under a tax law) to withhold any amount from payments due to us, the price for the applicable License is hereby increased by the amount that



would cause the net amount payable by you to equal the price that would otherwise apply for the sale of the License.

### 13. Credit Attribution.

- (a) If the Content is used in an editorial context in a Work For Distribution that is posted online, you will use your reasonable best efforts to accompany the Work For Distribution with a credit line hyperlink back to [www.pond5.com](http://www.pond5.com) that reads "Stock media provided by [Contributor Name]/ Pond5.com".
- (b) For all other Works For Distribution incorporating the Content where crediting is customary (including any editorial use) or where other such credits are provided, you will use your reasonable best efforts to accompany the Work For Distribution with a credit line that reads "Stock media provided by [Contributor Name]/ Pond5.com", which unless other hyperlinked credits are provided, need not be hyperlinked.
- (c) The unintentional omission of credit attribution provided for above will not be considered to be a breach of this Agreement as long as you use your reasonable best efforts to promptly cure the same upon written notice.

### 14. Interpretation.

Unless the context requires otherwise, in any part of this Agreement: (a) "including" (and any of its derivative forms, e.g. "includes"), "e.g." and "for example" means "including but not limited to"; (b) "must not", "should not", "shall not" and "may not" are expressions of prohibition, and "will", "must", "should" and "shall" are expressions of command, and not merely expressions of future intent or expectation; (c) use of the singular imports the plural and vice versa; (d) references to one or no gender include the other or no gender; (e) references to the terms "herein" or "hereto" refer to this Agreement (including any terms incorporated by reference herein); (f) references to "in each case" refers to each case referred to prior to such phrase in the same sentence; (g) the headings in this Agreement are for ease of reference only and shall not affect its interpretation; and (h) when calculating the time period before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and the time period shall be deemed to end at 11:59 PM Greenwich Mean Time on the applicable date.

### 15. Miscellaneous Provisions.

- (a) The parties to this Agreement are independent contractors, and nothing in this Agreement or the License or any supplemental license shall create a joint venture, partnership, employment relationship, or franchise or fiduciary relationship between the parties.
- (b) Upon Pond5's request therefore, you shall provide a copy of all uses of the Content.
- (c) If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.
- (d) This Agreement shall be construed in accordance with the laws of the United States and the State of New York without regard to its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. The License, any supplemental license, any download of Content and access to and use of the Website and the entering into this Agreement will be deemed to take place in the United States.
- (e) Any dispute regarding this Agreement, the License, any supplemental license or any Content or the use thereof will be resolved exclusively by a State or Federal court in New York City in the United States. We and you hereby waive any objection to venue, or to the inconvenience of the forum, of any such court or right to trial by jury to resolve any such dispute. The parties hereby consent to the jurisdiction of such courts.
- (f) You will promptly reimburse us for any reasonable attorneys' fees and court costs that are incurred by us in enforcing this Agreement.



- (g) All of the covenants, terms, provisions and agreements contained in this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and permitted assigns.
- (h) The Pond5 Parties and the applicable Contributors are intended third Person beneficiaries of this Agreement. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other third Person any rights, benefits or remedies of any nature whatsoever. Without limiting the generality of the foregoing, no provision herein shall be for the benefit of or enforceable by any creditor of any party hereto.
- (i) Except as otherwise set forth herein, any notice required or permitted to be given under this Agreement shall be in writing, delivered by hand, nationally recognized overnight courier service, email or registered or certified mail, addressed (i) to Pond5 at: Pond5 Inc., 80 Fifth Ave., 18th Floor, New York, NY 10011, with a copy by email to legal@pond5.com; or (ii) to you at the email address or contact information provided for the Pond5 member account or registration under which the relevant Content was downloaded.
- (j) If you breach any provision of this Agreement and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach this Agreement. Your obligations, the limitations and our rights and remedies set out in this Agreement are cumulative and are in addition to your obligations and our rights and remedies at law or in equity.
- (k) This Agreement is personal to you and is not assignable by you without Pond5's prior written consent; provided, however, that to the extent that any Content is included within a Work For Distribution made pursuant to the License, without our consent you may assign your rights hereunder as related to such Work For Distribution or any variation thereof. Pond5 may assign this Agreement without your consent to any other Person so long as such Person agrees to be bound by its terms. In addition, the applicable Contributors may, without your consent, assign their rights under this Agreement.
- (l) This Agreement is in addition to the Website Terms (which are all incorporated by this reference into this Agreement), all of which together embody the parties' entire agreement and supersedes and cancels any prior agreement, express or implied, written or oral, with respect to its subject matter; provided that in the event of any inconsistency between this Agreement and such Website Terms, the terms of this Agreement shall govern.

#### **16. Our Right to Make Changes to This Agreement.**

- (a) Notwithstanding anything else in this or any other agreement, (i) we reserve the right to make changes to this Agreement, the Website Terms at any time and without notice to you, and (ii) you will be subject to the terms of this Agreement and the Website Terms in force at the time that you download the Content.
- (b) No modification, deletion, amendment of any provision is binding on us unless in writing signed by our authorized representative or posted by us on the Website.

#### **17. Consent to Electronic Communications; Your Personal Data.**

- (a) You consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- (b) You consent to your personal information being shared with and processed in the course of our business by us and our Subsidiaries, which are located in various different countries, including the U.S., which provide varying and in some cases less privacy protection than your country.

#### **18. Acceptance of this Agreement.**

- (a) By clicking "I Agree" or otherwise signifying acceptance, the individual who is doing so is accepting and agreeing to be bound by this Agreement for him/herself and on behalf of his/her employer or other Person that is identified as the Member, and the Person that is designated as the Licensee. If you are accepting on behalf of your employer or other Person that is the Member and/or that is designated as the Licensee, you represent and warrant that you have full legal authority to bind such employer or other Person.
- (b) You acknowledge that you have read this Agreement, understand it, and have had an opportunity to seek independent legal advice prior to agreeing to it. In consideration of Pond5 allowing you to access or download the Content, you agree to be bound by the terms and conditions of this Agreement. Additionally, you acknowledge and agree that you have reviewed the Website Terms and any other agreements which may be



Incorporated by reference herein and therein, and to the extent of their incorporation in this Agreement, you agree to be bound by them.